his departure. I agree with that decision. Therefore the resolution was validly passed.

It is clear that the plaintiff was not happy with the resolution referring the issues he raised to another forum which till now has not been convened, the convening of which, according to him should be made by the defendants. But he is not without a remedy under the Revised Constitution. Under Clause VI.4 he can requisition for an Extra Ordinary General Meeting and at the meeting he can even table a motion of no-confidence in the Council.

For the above reasons, I dismissed the plaintiff's application with costs.

GOO HEE SING

v.

WILL RAJA A/L PERUMAL & ANOR.

HIGH COURT, SHAH ALAM
DATO' MAHADEV SHANKAR J.
[ORIGINATING SUMMONS NO. 24-746-1992]
1 SEPTEMBER 1993

LAND LAW: Caveat - Land having Restriction in interest - Dealing in land prohibited without consent of State Authority - Plaintiff purchased land without obtaining consent of State Authority - Whether caveatable interest acquired by plaintiff - Whether caveat entered by 'plaintiff' a nullity.

The plantiff and the first defendant had entered into a deed of sale for the purchase by the plaintiff of the first defendant's land.The said land was alienated to the first defendant by the State Authority with one special condition which reads:

> Tanah ini tidak boleh dijual,dipajak,digadai atau dipindahmilik dengan apa cara sekalipun tanpa kebenaran Pihak Berkuasa Negeri.

After the purported purchase was effected the plaintiff entered a caveat over the said land pending transfer of the title thereof by the first defendant. The first defendant never applied to the State Authority concerned for the sale or transfer of the said land either before or after the execution of the deed of sale and consequently no transfer of the land to the plaintiff had taken place or been effected. The plaintiff applied for specific performance of the deed of sale and for an extension of the caveat which he had earlier lodged over the said land.

The question was whether in the circumstance of the case any caveatable interest in the land could be acquired by the plaintiff.

Held:

As the prohibition in dealing with the land is total, nothing can happen without the consent of the Pihak Kuasa Negeri. Consequently, it must follow that a prospective purchaser, chargee or lessee of such land can have no caveatable interest in the land until the consent of the Pihak Kuasa Negeri has first been irrevocably obtained.

[Application dismissed].

Cases referred to:
Tan Heng Poh v. Tan Boon Thong & 5 Ors. [1992] 3 CLJ 1340 ***(refd)***
Hew Sook Ying v. Hiw Tin Hee @ Hew Hee [1992] 3 CLJ 1325 ***(refd)***
Khoo Teng Seong & Anor. [1992] 4 CLJ 2140 ***(refd)***

Other sources referred to:
Tne National Land Code, Judith Sihombing, p. 43

For the plaintiff - M.S. Ong; M/s. K.C. Yap Kamaludin & Partners
For the 1st respondent - Ashfar Ali; M/s. Ashfar Ali & Associates
For the 2nd respondent - Sallehuddin b. Saidin, Penolong Penasihat Undang-undang Negeri Selangor

JUDGMENT

Mahadev Shankar J:
On the face of it this is an application for an extension of a caveat pending the conclusion of a suit in this Court. But a question of paramount importance it raises is whether a caveatable interest is acquired by a purported purchaser of land which has a restriction in interest that it cannot be sold, pledged, charged or transferred in any manner without the permission of the State Authority.

The land comprised in H.S.(M)1592 No. P.T. Batu 2 in the Mukim of Sepang (the said land) was alienated to the first defendant on 26 October 1987. The special condition read as follows:

> **Sekatan-Sekatan Kepentingan**
> Tanah ini tidak boleh dijual, dipajak, digadai atau dipindahmilik dengan apa cara sekalipun tanpa kebenaran Pihak Berkuasa Negeri.

In the face of this restriction the first defendant entered into a purported deed of sale of the said land to the plaintiff on 9 September 1988, for a sum of RM32,000. There is no reference whatsoever to the said restriction in the Deed of Sale. Nor has it been explained why the figure of RM32,000 has in places been deleted and substituted with a sum of RM25,000. The plaintiff holds himself out in this Court as an illiterate person who only understands Hokkien and claims not to have understood what he was signing. Nevertheless he was wise enough to lodge a caveat (the said caveat) the very same day against the said land in reliance of this Deed of Sale. Since he would have had to swear a statutory declaration in support of the caveat, his alleged ignorance of the contents of the Deed of Sale must be taken with more than just a pinch of salt.

One week later on 5 October 1988 the parties executed another document whereby the first defendant gave the first plaintiff a cheque for RM40,000 by way of security for the transfer of the said land which the plaintiff is said to have bought for RM32,000. This cheque was to be forfeited by the plaintiff if the said land was not transferred to the plaintiff. The plaintiff has signed this document by way of confirmation that he had received the cheque. The document does not state when the said land was to be transferred to the plaintiff. Once again the plaintiff claims he did not know what he was signing and also says did not receive the cheque.

The land was not transferred. There is no evidence that the required consent from the Pihak Berkuasa Negeri (i.e. the State Executive Council) was ever applied for, let alone obtained.

Counsel for the first defendant informed the Court that in early February 1990 the parties agreed that RM40,000 aforesaid would be paid by instalments with six post dated cheques. The first for RM10,000 was cashed personally by the plaintiff. The other five bounced. The plaintiff then filed Telok Datuk Magistrate Court Summons No. 52-8-91. Contentious affidavits were filed by both parties. On 23 September 1992 the parties appeared before the learned Magistrate in Open Court. Both the plaintiff and the first defendant were represented by Counsel. A Consent Order was then made whereby a default judgement obtained by the plaintiff against the first defendant was set aside and a further Consent Order was made whereby the first defendant was ordered to pay the plaintiff RM28,000 in full settlement of his claims within fourteen days of the sealed order being served on him whereupon the plaintiff was obliged to have the said caveat cancelled within fourteen days thereafter.

But the plaintiff refused to accept the RM28,000 when it was tendered to him. Instead he applied on 9 October 1992 to have the Consent Order set aside on the ground that, even though he was present in Court when it was made, he was not properly briefed by his own Counsel of the terms of the Consent Order and that therefore it was not binding upon him.

That application was heard on 30 November 1992 and it was dismissed by the learned Magistrate. Against that order of dismissal, the plaintiff's solicitors say there is a pending appeal No. 12-5-92 which has not yet been heard. No such appeal exists in the Court records under this file number!

On 29 September 1992 this plaintiff filed a Civil Suit No. 22-410-92 in this Court through another firm of solicitors M/s. K L Yap Kamaluddin & Partners. The relief prayed for is for specific performance of the Deed of Sale aforesaid of the said land, and damages for non-performance and in the alternative for the sum of RM40,000 being the sum he claims is due to him on the second agreement dated 5 October 1988 which he claimed earlier that he did not understand when he executed it.

On or about 4 September 1989 the plaintiff had received a letter from the Pentadbir Tanah Daerah Sepang to show cause why his caveat should not be removed. It will be recollected that the consent order was made on 23 September 1989. What the plaintiff chose to do thereafter was to file the present application in this Court on 29 September 1992 for an order that his caveat be extended until the Civil Suit he had filed had been disposed off.

The chequered history of subsequent events relating to the applications and counter applications in this originating summons need not delay us except to state that by 21 July 1993 the only issue which this Court had to decide was whether in the face of the restriction in interest, the caveat filed by the plaintiff was a nullity.

In order to file a caveat the caveator must have a caveatable interest. What is a caveatable interest has been the subject of many decisions, some of the most recent cases being *Tan Heng Poh v. Tan Boon Thong & 5 Ors.* [1992] 3 CLJ 1340, *Hew Sook Ying v. Hiw Tin Hee @ Hew Hee* [1992] 3 CLJ 1325, and Khoo Cheng Yee (F) in *Khoo Teng Seong & Anor.* [1992] 4 CLJ 2140.

To put it in a nutshell, on 29 September 1988 the plaintiff should have been able to claim title to the said land, or a right to such title by virtue of the Deed of Sale aforesaid. Alternatively he should be a person who could validly claim a right to such title.

The point however is that the claim must be to title or a right thereto in praesenti, and not to some contingent title or right thereto in futuro.

This to my mind raises a question of paramount importance to the administration of land law in Malaysia, whenever the title contains a restriction in interest of the present kind. Because the prohibition in dealing with the land is total nothing can happen without the consent of the Pihak Kuasa Negeri.

Consequently it must follow that a prospective purchaser, chargee, or lessee of such land can have no caveatable interest in such land until the consent of the Pihak Kuasa Negeri has first been irrevocably obtained.

Notwithstanding the comment of Judith Sihombing in her learned treatise on the National Land Code at p. 43 "that, even the most ephermeral of claims to interests can be caveated ..." I am impelled to this conclusion because the applicant has not been able to demonstrate that an application for approval had already been made and that the Pihak Kuasa Negeri was bound to grant that approval as a matter of course within a reasonable period of time.

So until the grey areas surrounding the circumstances of the granting or withholding of consent to deal with land subject to such restrictions in interest are clarified, I regret to state that there is therefore only one decision that is possible in this case. The application for the maintenance of this caveat must be dismissed.

I made no order as to costs here because this point has not been taken before. Besides the plaintiff is out of pocket by the sum of money he paid for the said land, be it RM32,000 or RM25,000 as the case may be. The plaintiff's claim to ignorance of the documents he executed have not impressed me. On the last day of hearing the first defendant produced RM28,000 cash which his solicitor undertook to hold for seven days, if the plaintiff wished to accept it in full settlement as provided in the Consent Order. That is a matter for the plaintiff to sort out with his legal advisors. The Civil Suit No. 22-410-92 and the alleged appeal against the dismissal of the application to set aside the Consent Order will have to be dealt with on their own merits if and when the time comes.